

REMARKS

The specification has been amended to correct minor errors therein

The original claims have been cancelled and new claims 8-12 are submitted. These new claims more particularly set forth a basic feature of the present invention, namely the *lever arms extending outwardly from each other at an angle of approximately 35 degrees.*

As pointed out in the Declaration submitted by the inventor with a previous amendment, this angulation provides a significant improvement in the operation of the device of the invention in that it effects movement of the lever arms in the natural arcuate motion of an individual's arms.

The meaning of the terminology used in the specification and claims has been questioned by the Examiner by indicating that this terminology means that the angle between the two arms is 35 degrees. To eliminate any such question, a measurement of the angles shown in FIG 5 by a person well educated and acquainted with geometry has been made and confirmed by the enclosed Declaration. This drawing is a copy of a photograph of the device of the invention itself. As verified in the Declaration, the angles of the two arms from a *center line* are 35 degrees outwardly from

each other as taught and claimed. The drawings are a part of the description of the invention and can be interpreted to define the invention. It is well established that resort may be had to drawings to cure omissions or ambiguities in the written description and may be relied on to satisfy the disclosure requirements of 35 USC 112(See section 13.02 of Patent Law Fundamentals by Peter Rosenberg). See Exhibit "B".

The claims have been rejected over the prior art, indicating that the meaning of the terminology of the claims and specification is that the arms are angulated so there is a 35 degree angle between the two arms. This conclusion has been controverted by the evidence to the contrary, indicated above.

The specification and claims now are believed to obviate the objections raised in the last Action.

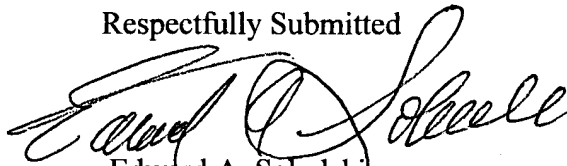
The claims have been rejected over Voris on the grounds that Voris shows the arms running outwardly from each other at an angle of approximately 35 degrees. In Voris, the two arms pivot about the same axis which is in the machine center and the when pushing upwardly the user's arms travel in a straight plane and converge. They do not follow the normal upward motion of a person's arms. Voris neither teaches nor suggests any structure wherein the lever arms are supported on separate brackets such brackets being angulated relative to each other, as taught and claimed by Applicant.

The claims have further been rejected over Danylieko in view of Snyderman. In Danylieko, the pivot arms pivot at an angle which is 90 degrees from center axis. The two pivot angles are not angulated relative to each other as in applicants claimed device. Thus, the press arms travel upwardly in an arcuate manner but do not converge as in applicant's claimed invention. Further there is no suggestion of there being a 35 degree

angle between each arm and the central axis. Snyderman has been recited merely to show the adjustable weight bench feature and is not related to the above indicated basic features of applicant's claimed invention.

It is believed that the claims are now in condition for allowance, and such Action is respectfully requested. If the Examiner has any questions with regard to this amendment or suggestions for further amendment, it would be appreciated if he would telephone Applicant's attorney so that such matters can be expeditiously resolved.

Respectfully Submitted



Edward A. Sokolski
Attorney for Applicant
3868 Carson Street, 105
Torrance, CA 90503
(Ph) 310-540-5631
(Fax) 310-540-2699

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being mailed with the U.S. Postal Service via 1st class mail, the correct postage prepaid, in an envelope addressed to: **MAIL STOP: RCE, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450**, on July 22, 2004.

Signed



Douglas M. Kautzky



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re: Patent Application of

KENNETH CARTER (assigned to Task Industries)

Title: EXERCISE MACHINE FOR EXERCISING UPPER BODY PORTIONS

Filed: January 30, 2002

Art Unit: 3764

Examiner: VICTOR KENNY HWANG

RECEIVED
JUL 29 2004
TECHNOLOGY CENTER R3700

DECLARATION VERIFYING ANGLES SHOWN IN PATENT DRAWING

I, Bart Sokolski, Declare as follows:

I am a part-time employee of Edward Sokolski, the attorney representing the Applicant of the above indicated patent application.

I have completed a substantial number of mathematics courses both at the high school and college level and am very knowledgeable of Geometry. I am presently a mathematics teacher at the middle school level in the Long Beach School System.

I have carefully studied FIG 5 of the above indicated patent application and have determined that as shown in this FIG, each of the two angles formed by the centerline and arms 22 and 23 measures approximately 35 degrees. I have marked up Exhibit "A" hereto which shows FIG 5 of the patent application to show the two angles. For clarity, one angle is drawn in red, and the other angle is drawn in blue.

Being duly warned that willful false statements and the like are punishable by fine, imprisonment, or both under 18 United States Code 1001 and may jeopardize the validity of the above Application or any Patent issuing thereon, I Declare that all statements made of my own knowledge are true and all statements made based on information and belief are believed to be true.

DATE 7/21/04

Bart J. Sokolski

BART SOKOLSKI

"A"

and which are not mentioned in the text of the specification.⁹ The weight of authority, however, is that the absence of description in the specification is not by itself fatal to patentability, in that resort may be made to the drawings to cure omissions in the written description.¹⁰ It is well settled that drawings may be relied upon to satisfy the disclosure requirements of 35 U.S.C. § 112.¹¹ Drawings may be included in considering compliance with the description-of-the-invention requirement.¹² Under proper circumstances, drawings alone may suffice to satisfy the "written description" requirement of 35 U.S.C. § 112, as is the case in regard to designs.¹³ Of course, the feature(s) must be clearly apparent in the drawings.¹⁴ *Ambiguous* portions of drawings cannot be relied on to support a patent claim when these same claims are not sufficiently described in the patent specification itself.¹⁵ While drawings accompanying the claims may be used as an aid in claim interpretation, a feature not mentioned in the claims cannot be inferred from the drawings.¹⁶ A discussion of what is deemed to constitute "new matter" appears in § 15.06[5], *infra*.

Arguments based upon measurement of patent drawings are

⁹ *Maclaren v. B-I-W Group, Inc.*, 535 F.2d 1367, 1373, 190 U.S.P.Q. 513, 517 (2d Cir. 1976); *Appleton v. Crouse-Hinds Co.*, 215 U.S.P.Q. 64, 73 (N.D. Ill. 1981).

¹⁰ *In re Kaslow*, 707 F.2d 1366, 1375, 217 U.S.P.Q. 1089, 1096 (C.A.F.C. 1983); *Omark Indus., Inc. v. Textron, Inc.*, 688 F.2d 1242, 1247, 216 U.S.P.Q. 749, 753 (9th Cir. 1982); *Ex parte Rohrer*, 20 U.S.P.Q.2d 1460, 1463 (P.T.O. Bd. Pat. App. & Int. 1991).

¹¹ *In re Berkman*, 642 F.2d 427, 429, 209 U.S.P.Q. 45, 46 (C.C.P.A. 1981); *Breen v. Cobb*, 487 F.2d 558, 559, 179 U.S.P.Q. 733, 734 (C.C.P.A. 1973); *In re Reynolds*, 443 F.2d 384, 388, 170 U.S.P.Q. 94, 98 (C.C.P.A. 1971); *In re Wolfensperger*, 302 F.2d 950, 955, 133 U.S.P.Q. 537, 542 (C.C.P.A. 1962); *Ex parte Horton*, 226 U.S.P.Q. 697, 699 (P.T.O. Bd. Pat. App. & Int. 1985).

¹² *Texas Instruments, Inc. v. United States Int'l Trade Comm'n*, 871 F.2d 1054, 1061, 10 U.S.P.Q.2d 1257, 1262 (C.A.F.C. 1989); *In re Barker*, 559 F.2d 588, 593, 194 U.S.P.Q. 470, 474 (C.C.P.A. 1977).

¹³ *Vas-Cath, Inc. v. Mahurhar*, 935 F.2d 1555, 19 U.S.P.Q.2d 1111, 1118 (C.A.F.C. 1991), *rev'g*, 17 U.S.P.Q.2d 1353, 1356 (N.D. Ill. 1990).

¹⁴ See *Schriber-Schroth Co. v. Cleveland Trust Co.*, 305 U.S. 47, 59, 39 U.S.P.Q. 242, 246-47 (1938).

¹⁵ *Refac Int'l Ltd. v. IBM*, 689 F. Supp. 422, 431, 10 U.S.P.Q.2d 1755, 1761 (D.N.J. 1988).

¹⁶ *Inpro Inc. v. A.W. Chesteron Co.*, 2 U.S.P.Q.2d 1597, 1604 (N.D. Ill. 1987).